National Labor Relations Board

Weekly Summary of NLRB Cases

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September 5, 2008 | W-3172

C A S E S S U M M A R I Z E D
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Air Management Services, Inc. (28-CA-21378; 352 NLRB No. 145) Albuquerque, NM Aug. 29, 2008. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by: (1) interrogating job applicants regarding their union membership or union affiliation in its job applications; (2) threatening job applications by informing them that it would be futile to apply for employment if they were members of the Union; (3) interrogating applicant Dominic Baca by asking him whether he was a member of the Union or had any union affiliation; (4) threatening not to hire Union members; and (5) requiring Baca to sign a declaration disavowing Union membership or affiliation as a condition of employment. [HTML] [PDF]

The Board additionally affirmed that the Respondent violated Section 8(a)(3) by refusing to hire applicants Dominic Baca, Richard Espinosa, Kenneth Chavez, and Patrick Lucero. In so doing, the Board found that assuming arguendo the Respondent "put forth evidence reasonably calling into question" the applicants' genuine interest in working for the Respondent, under *Toering Electric*, 351 NLRB No. 18 (2007), the General Counsel proved their genuine interest by a preponderance of the evidence. The Board found it unnecessary to decide whether the Respondent also violated Section 8(a)(3) by unlawfully refusing to consider the applicants for hire, because the remedy for such violation would be subsumed within the broader remedy for the refusal-to-hire violation.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Sheet Metal Workers Local 49; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Albuquerque, Nov. 14-15, 2007. Adm. Law Judge William L. Schmidt issued his decision April 16, 2008.

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Alcoa, Inc. (25-CA-29487, et al., 352 NLRB No. 141) Lafayette, IN Aug. 29, 2008. The Board principally reversed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing its leave policy to prohibit unit employees from taking unpaid leave to attend monthly union meetings. The Board further reversed the judge's finding that the Respondent violated Section 8(a)(3) and (1) in contracting out the Total Predictive Maintenance event at the facility in April 2005 to retaliate against the Union's insistence that bargaining unit employees perform bargaining unit work. [HTML] [PDF]

In addition, the Board reversed the judge's dismissal of the allegation that employee Hewitt's initial 3-day suspension violated Section 8(a)(3) and (1) and adopts the judge's finding (but applied a different rationale) that the Respondent violated Section 8(a)(3) and (1) in suspending Hewitt for an additional 27 days for his comments at the Aug. 4, 2005 grievance meeting.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Steelworkers Local 115A; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Lafayette, Feb. 27 – March 1, 2006. Adm. Law Judge Arthur J. Amchan issued his decision July 28, 2006.

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Anchor-Harvey Components, LLC (33-RM-373; 352 NLRB No. 140) Freeport, IL Aug. 29, 2008. Relying on *Coca-Cola Bottling of Miami,* 237 NLRB 936 (1978), the Board found that Anchor-Harvey Components, LLC's (Employer's) challenge to the ballots of replaced strikers on the basis that they had been permanently replaced was timely. Similarly, the Board found that Auto Workers International and its Local 2127's (Union's) challenge to the ballots of material handlers Carlos Villegas, Joshua Saldecki, and Mark Haag, on the basis that they hold positions not included in the bargaining unit, was also timely. The Board sustained the Employer's challenge to the ballots of the replaced strikers, but declined to decide the merits of the Union's challenge to ballots of the material handlers. The Board further declined to decide whether the ballot of replaced striker Robert Nieman, whose name did not appear on the *Excelsior* list, should be opened and counted. In the absence of exceptions, the Board adopted the hearing officer's finding that replacement workers were eligible to vote and overruled the Union's challenge to those ballots. [HTML] [PDF]

The Board remanded the case to the Regional Director to open and count the ballots as directed, and ordered that the ballots of Nieman and the material handlers be held in abeyance pending the tally of the other ballots. If the ballots of Nieman and the material handlers become determinative to the outcome of the election, the Regional Director is instructed to take further appropriate action.

(Chairman Schaumber and Member Liebman participated.)

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Auto Workers International and its Local 155 (7-CB-15815; 352 NLRB No. 130) Warren, MI, Aug. 26, 2008. The Board adopted the administrative law judge's finding that the Respondents violated Section 8(b)(3) of the Act by failing and refusing to execute a written collective-bargaining agreement ratified by the bargaining unit. The Board modified the Order and notice to include a unit description but it declined to change the judge's cease and desist language or enter an affirmative bargaining order as requested by the General Counsel. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Charge filed by U.S. Mfg. Corp.; complaint alleged violation of Section 8(b)(3). Hearing at Detroit on Feb. 19, 2008. Adm. Law Judge John H. West issued his decision April 24, 2008.

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Carson Trailer, Inc. (21-CA-37999, 38141.; 352 NLRB No. 144) Gardena, CA Aug. 29, 2008. The Board granted the General Counsel's motion to strike the Respondent's exceptions because they did not meet the minimum requirements of Section 102.46(b) of the Board's Rules and Regulations. The Board found that the Respondent failed to allege with any particularity the errors it contends the administrative law judge committed, or on what grounds it believed the judge's decision should be overturned. In addition, the Respondent failed to designate the portions of the record on which it relied, as the Board's Rules also require. In the circumstances,

the Board found, in accordance with Section 102.46(b)(2), that the Respondent's exceptions should be disregarded. The Board therefore adopted the judge's Section 8(a)(3) and (1) findings and conclusions, in the absence of exceptions. [HTML] [PDF]

The Board also granted the General Counsel's request for a Spanish notice posting. The record showed that most of the employees at the Respondent's Broadway facility, where the violations occurred, are Spanish speaking, and the Respondent conducted a mandatory employee meeting at that facility in Spanish. In addition, each of the seven non-supervisory employees who testified in this proceeding did so through a Spanish interpreter. In these circumstances, the Board found a Spanish notice posting requirement to be appropriate.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Sheet Metal Workers Local 170; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Los Angeles, May 12-13, 2008. Adm. Law Judge William G. Kocol issued his decision July 16, 2008.

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Foster Poultry Farms (32-RC-5539; 352 NLRB No. 136) Porterville, CA Aug. 28, 2008. The Board found that the Employer failed to comply with the requirements of *Ryder Memorial Hospital*, 351 NLRB No. 26 (2007), by distributing and posting copies of a campaign leaflet in English and Spanish containing an altered sample ballot only in English. In *Ryder*, the Board revised its official ballot to include a disclaimer stating that the Board does not endorse any choice in the election and that any markings on sample ballots were not made by the Board. The Board further required that altered sample ballots distributed by parties to an election contain the prescribed disclaimer. The Employer's altered sample ballot was not an actual reproduction of the Board's official sample ballot included in the notice of election and did not include the Board's complete disclaimer language, which was provided on the official sample ballot in English, Spanish, and Laotian. Therefore, the Board found the Employer's conduct objectionable and set aside the election. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

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GFC Crane Consultants, Inc. (12-CA-21302, et al.; 352 NLRB No. 142) Fort Lauderdale, FL Aug. 29, 2008. The Board affirmed the administrative law judge's decision and supplemental decision following the Board's remand for further consideration in light of its decisions in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), *Croft Metals, Inc.*, 348 NLRB 717 (2006) and *Golden Crest Healthcare Center,* 348 NLRB 727 (2006). [HTML] [PDF]

The Board found that the Respondent did not establish that its port engineers were statutory supervisors and that the Respondent violated Section 8(a)(5) of the Act by eliminating bargaining unit positions, by laying off its port engineer employees without bargaining with the Union, and by withdrawing recognition of the Union.

The Board further found that the Respondent's layoff of the port engineer employees violated Section 8(a)(3). In so finding, the Board relied on the pretextual nature of the Respondent's asserted reasons for its actions. In particular, the Board found that the record testimony contradicted the Respondent's assertions that there was less work of the port engineers, that it wanted to upgrade its work force, and that it restructured operations because of unreasonable Union demands. The Board also relied on the fact that the termination letters stated that the port engineers had been given an opportunity to apply for newly created CMT positions when, in fact, the Respondent had never previously informed them of that opportunity.

Chairman Schaumber and Member Liebman participated.)

Adm. Law Judge Pargen Robertson issued his decision April 4, 2002 and Adm. Law Judge George Carson II issued his supplemental decision Feb. 9, 2007.

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Honeywell Electronic Materials Mfg., LLC (19-CA-30824, et al.; 352 NLRB No. 135) Spokane, WA Aug. 28, 2008. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by (1) soliciting employee grievances and promising to address them in order to undermine employee support for the Union; (2) stating the futility of employees' support for the Union; and (3) interrupting an employee's nonwork-related conversations with other employees because the employee supported the Union, where those conversations were short and nondisruptive. The Board also affirmed the judge's finding that the Respondent did not violate 8(a)(1) and (3) by discharging Terri Bedell for misuse of the Respondent's peer-driven award program. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Operating Engineers Local 280; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Spokane, Jan. 15-16, 2008. Adm. Law Judge William G. Kocol issued his decision March 26, 2008.

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In Re: Uzi Einy (2-AD-59; 352 NLRB No. 134) New York, NY Aug. 29, 2008. The Board adopted the administrative law judge's decision finding that the Respondent, Uzi Einy, engaged in misconduct of an aggravated character under Section 102.177(a) and (b) of the Board's Rules and Regulations in connection with proceedings in the case *675 West End Owners Corp*., 345 NLRB 324 (2005). Accordingly, the Board suspended the Respondent from practicing before or appearing on behalf of a party before the Board for 6 months from the date of the decision. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Adm. Law Judge Richard A. Scully issued his decision Oct. 26, 2007.

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Jerry Ryce Builders, Inc. (13-CA-43917, 43918; 352 NLRB No. 143) Chicago, IL Aug. 29, 2008. The Board adopted the administrative law judge's findings that when the Respondent failed to hire overt Union salts Luciano Padilla, Dwan Johnson, and Humberto Juarez, the Respondent was hiring or had concrete plans to hire, and that the General Counsel had met his burden to show that all of the applicants had experience or training relevant to the announced or generally known requirements for the bricklayer position, and therefore the failure to hire these applicants was due to their union affiliation, and violated Section 8(a)(3) and (1) of the Act. The Board noted that there were no exceptions filed to the judge's finding that the Respondent violated Section 8(a)(1) and (3) by failing to consider these applicants for hire. [HTML] [PDF]

The Board also adopted the judge's finding that the Respondent violated Section 8(a)(3) and (1) by discharging employees Andy Kwiecien and Jack Probola for union activity, as well as his findings that the Respondent violated Section 8(a)(1) by: (a) telling employees that others had been discharged because of their union affiliation; (b) telling employees to eat their lunches on the jobsite to avoid contact with union representatives; and (c) instructing employees to call the police if they saw individuals associated with the Union.

The Board affirmed the judge's findings that the Respondent violated Section 8(a)(1) by coercively interrogating employees Jaroslaw and Marcin Sral on several occasions when the Respondent's owner Omielan Boguslaw inquired as to whether they belonged to the Union, stated that it was good that they did not belong, and/or made negative comments about the Union.

The decision includes a footnote finding no basis to reverse the judge's credibility findings, although Chairman Schaumber noted that he questioned some of the judge's basis for crediting or discrediting certain testimony of the witnesses, but that he did not find that a clear preponderance of the evidence demonstrated that the judge's credibility resolutions were incorrect.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Bricklayers Illinois District Council No. 1; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Chicago, July 30-31, 2007. Adm. Law Judge Mark D. Rubin issued his decision Nov. 19, 2007.

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M.V.M., Inc. (24-CA-10681; 352 NLRB No. 133) San Juan, PR Aug. 29, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by suspending and then discharging employee Marcial Rodriguez for concertedly sending a letter critical of the Respondent to the Respondent's client. In finding that violation, the Board rejected the Respondent's arguments that the letter lost the Act's protection because it did not relate to an ongoing labor dispute, disparaged the Respondent's services; and/or contained maliciously false allegations. The Board also adopted the judge's finding that

the Respondent violated Section 8(a)(1) by coercively interrogating Rodriguez about the letter. Finally, the Board affirmed the judge's decision to reopen the hearing, after the court reporter irretrievably lost witness Freddie Barreto's testimony, to accept additional testimony. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Marcial Rodriguez, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at San Juan on Nov. 8, 2007. Adm. Law Judge Paul Bogas issued his decision April 25, 2008.

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Post Tension of Nevada, Inc. (28-CA-21579; 352 NLRB No. 131) Phoenix, AZ, Aug. 29, 2008. The Board adopted the administrative law judge's findings that the Respondent did not violate Section 8(a)(1) of the Act by engaging in unlawful surveillance of employees; the Respondent violated Section 8(a)(1) by enacting and maintaining overly broad and discriminatory rules that prohibited employees from talking to union representatives; the Respondent violated Section 8(a)(1) by informing employees it would not issue paychecks on Friday mornings in order to interfere with the employees' ability to meet with a union representative, but did not violate Section 8(a)(3) by imposing more onerous terms and conditions of employment and prohibiting employees from cashing checks at a nearby facility; the Respondent violated Section 8(a)(1) by threatening employees with discharge if they engaged in a strike; the Respondent did not discharge 15 employees in violation of Section 8(a)(3) and (1); the employees engaged in an unfair labor practice strike; the Respondent violated Section 8(a)(3) and (1) by failing and refusing to reinstate 15 employees following their unconditional offers to return to work; and the Respondent violated Section 8(a)(1) by refusing to give applicant Brady Bratcher an employment application but did not violate Section 8(a)(3) by refusing to consider him for employment. [HTML] [PDF]

The Board additionally found that the Respondent's rule against going to the Chevron station also prohibited the employees from assembling. Further, the Board rejected the judge's erroneous conclusion that the reinstatement rights of the unfair labor practice strikers, who were not salts, are subject to *Oil Capitol Sheet Metal,* 349 NLRB No. 118 (2007).

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Iron Workers District Council of the State of California and Vicinity; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Phoenix, Feb. 12-14, 27, 2008. Adm. Law Judge Lana H. Parke issued her decision April 18, 2008.

***

Structure Tone, Inc. (22-CA-28139; 352 NLRB No. 132) Newark, NJ Aug. 27, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish Operating Engineers Local 825 (Union) with relevant information that it had requested. The Union's request sought information related to the

Respondent's active construction projects within the Union's geographic jurisdiction. Like the judge, the Board assumed, without finding, that the Union's request related to non-unit employees, but found that the Union adequately demonstrated the relevance of the information. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Operating Engineers Local 825; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Newark on March 25, 2008. Adm. Law Judge Joel P. Biblowitz issued his decision April 22, 2008.

***

Town & Country Plumbing & Heating, Inc. (7-CA-46572; 352 NLRB No. 139) Bath, MI Aug. 29, 2008. The Board found on a stipulated record that the Respondent violated Section 8(a)(5) of the Act by withdrawing recognition from the Union without having bargained for a reasonable period of time following a formal board settlement. The settlement required the Respondent to, among other things, bargain in good faith with the Union. The Board assumed arguendo that the reasonable period for bargaining required under the settlement commenced no earlier than Jan. 16, 2003, the date of the parties' first face-to-face bargaining session after entering into a stipulated settlement agreement (but before the Board's Feb. 3, 2003 approval of the settlement). Applying the multifactor test under *AT Systems West*, *Inc.*, 341 NLRB 57 (2004), the Board found that a reasonable period of bargaining had not elapsed when the Respondent withdrew recognition on June 27, 2003, which was at most some 5 ½ months after the bargaining had commenced. In particular, the Board found that the most probative facts were that the parties were bargaining for their first contract, that they were not at impasse, and that they held just three, 2-hour, bargaining sessions. Those facts outweighed the countervailing considerations, i.e., that the parties neither experienced any particular bargaining complexities nor were they on the verge of an agreement. [HTML] [PDF]

Because the Board found that this 5 ½ month period did not constitute a reasonable period of bargaining, the Board found it unnecessary to address whether a minimum 6-month period of bargaining is mandated here, as it was in *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002).

(Chairman Schaumber and Member Liebman participated.)

The parties waved their right to a hearing before an administrative law judge.

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Walgreen Co. (29-CA-28345; 352 NLRB No. 137) Oceanside, NY Aug. 29, 2008. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by telling union agents, in the presence of employees, that they may not speak to

employees in a public parking lot; threatening the union agents, in the presence of employees, with the summoning of police if they continue to speak with its employees in a public parking lot; and summoning the police, in the presence of employees, to eject union agents from a public parking lot. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Food and Commercial Workers Local 1500; complaint alleged violation of Section 8(a)(1). Hearing at Brooklyn on Oct. 25, 2007. Adm. Law Judge Steven Davis issued his decision Feb. 6, 2008.

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Wayneview Care Center and Victoria Health Care Center (22-CA-26987, et al.; 352 NLRB No. 129) Wayne and Matawan, NJ Aug. 26, 2008. The Board, affirming the administrative law judge, held that the Respondents committed various violations of Section 8(a)(3), (5), and (1) of the Act in connection with contract negotiations and a resulting strike and lockout. [HTML] [PDF]

The Respondents are nursing homes in New Jersey that share the same chief operating officer. The Union represents a unit of Respondent Victoria's certified nursing assistants, housekeeping, laundry, and dietary employees, and a separate unit of Respondent Wayneview's employees in those same classifications. The Union was also a party to a multiemployer agreement with a group of other nursing homes (not including the Respondents), which agreement contained a most-favored-nations clause.

In Feb. 2005, the Union and the Respondents began negotiations for successor collective-bargaining agreements for the Wayneview and Victoria units. In April, the negotiation sessions were combined. Also in April, Respondent Wayneview began developing a strike-contingency plan as required by the state of New Jersey. Respondent Wayneview began interviewing temporary employees, but made no hiring commitments.

The parties bargained through the spring and summer, culminating in an all-night mediated bargaining session on Aug. 18. The parties exchanged proposals near the end of that session, but they adjourned without agreement and without scheduling any additional meetings, although the judge found that they anticipated that further meetings would occur. On Aug. 22, the Victoria employees voted to authorize a strike. The Wayneview employees elected not to strike and sent the Respondent a letter stating that their activity would be limited to informational picketing on Aug. 23 during nonworking time. Also on Aug. 22, the Respondents faxed the Union a proposal that was regressive on certain issues.

On Aug. 23, after their informational picketing, the Wayneview employees attempted to report to work, but were not permitted to do so. The facility was manned with temporary employees until Sept. 6, when the unit employees were reinstated. While the employees were locked out, they circulated a decertification petition. A Wayneview manager told one employee that she could return to work if she signed the petition.

The Victoria employees began a strike on Aug. 23. On Aug. 26, they submitted an offer to return to work on Aug. 28, which the Union clarified was an offer to return under the terms of the expired contract. On Aug. 28, the Victoria employees reported for work, but were told they were locked out. Many were reinstated on Sept. 6, but some remained locked out for several months. On Sept. 6, the Respondents implemented their Aug. 22 offers at each facility.

The judge found that both Respondents violated Section 8(a)(5) and (1) by threatening to implement, and by actually implementing, their final contract offer in the absence of a valid impasse; by refusing to meet with the Union; and by refusing to provide the Union with certain requested information. The judge also found that Respondent Wayneview violated Section 8(a)(3) by locking out the unit employees for unlawful reasons, in the absence of a business justification, and without informing the Union of the conditions for ending the lockout. The judge found that the lockout also violated 8(a)(5) because it was an attempt to coerce acceptance of a unilaterally implemented final offer. In addition, the judge found that Respondent Wayneview violated 8(a)(1) by assisting with a decertification petition through certain conduct of its "staffing coordinator" and through an admitted supervisor and agent's promise that an employee could return to work if she signed the petition. The judge found that Respondent Victoria violated Section 8(a)(3) by failing to reinstate the strikers and Section 8(a)(5) by locking them out in an attempt to coerce acceptance of a unilaterally implemented final offer.

The Board affirmed the violations. In finding that the parties did not reach a valid impasse, the Board emphasized that, although the Union had initially adhered to a health insurance proposal that required participation in the Union's plan (which would mirror the Union's agreement with the other employers and avoid application of that agreement's most-favored-nations clause), the Union retreated from that position on Aug. 18 and offered to continue participating in the Respondents' plan. The Board distinguished *Richmond Electrical Services*, 348 NLRB 1001 (2006), in which the union conceded that a most-favored-nations clause precluded it from agreeing to lower wages, and in which impasse over wages led to a complete breakdown in negotiations. The Board also distinguished *Matanuska Electric Assn.*, 337 NLRB 680 (2002), in which the Board found a valid impasse on the basis that the union had engaged in stall tactics and the respondent had specifically stated that it was willing to continue bargaining if the union submitted a proposal showing some movement.

In finding that the Wayneview lockout violated Section 8(a)(3), the Board relied on the judge's finding that Respondent Wayneview failed to show a legitimate and substantial business justification for the lockout. The Board found it unnecessary to rely on the judge's alternative findings that the lockout was motivated by antiunion animus and that the Respondent unlawfully failed to inform the Union of the conditions for ending the lockout. Finally, in finding that Respondent Wayneview unlawfully assisted with a decertification petition, the Board relied only on the admitted supervisor's promise to an employee that she could be reinstated if she signed the petition. The Board found it unnecessary to rely on alleged conduct by the Wayneview staffing coordinator.

The Board adopted the judge's findings that the lockout and refusal to reinstate at Victoria were unlawful and that both Respondents violated Section 8(a)(5) by refusing to provide the Union with certain relevant and necessary information. The Board also adopted various other Section 8(a)(3), (5), and (1) violations in the absence of exceptions.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by SEIU 1199, New Jersey Health Care Union; complaint alleged violations of Section 8(a)(1), (3), and (5). Hearing at Newark, eleven days from Sept. 26 to Dec. 6, 2006. Adm. Law Judge Eleanor MacDonald issued her decision July 26, 2007.

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Whitesell Corp. (18-CA-18143, et al.; 352 NLRB No. 138) Washington, IA Aug. 29, 2008. The administrative law judge found that the Respondent violated Section 8(a)(1) and (5) of the Act in various respects. On review, the Board adopted some of the judge's findings, while reversing other findings. Regarding the Section 8(a)(1) findings, the Board adopted the judge's finding that the Respondent violated Section 8(a)(1) by prohibiting distribution of union notices during employees' breaktimes and by promulgating a policy prohibiting employees from posting union materials on the Respondent's bulletin boards. [HTML] [PDF]

Regarding the judge's Section 8(a)(5) findings, the Board adopted his conclusions that the Respondent violated Section 8(a)(5) by: (1) terminating the parties' existing collective-bargaining agreement without first providing the requisite Section 8(d)(3) notice to the Federal Mediation and Conciliation Service; (2) failing to provide the Union with necessary and relevant information it requested regarding merit pay, vacation, and assignment of unit employees to perform work at the Respondent's new facility; (3) unilaterally implementing portions of its June 12, 2006 final offer without first bargaining with the Union to a good faith impasse; (4) unilaterally discontinuing the supplemental accident insurance fund; (5) unilaterally discontinuing dues check-off; and (6) failing and refusing to process grievances.

The Board reversed, however, the judge's findings that the Respondent violated Section 8(a)(5) by: (1) failing to provide the Union with necessary and relevant information concerning layoff and recall and retirement; and (2) implementing a new attendance policy. As to the layoff and recall information, the Board found that the Respondent provided the Union with the requested information and that the Union did not subsequently renew its request or otherwise indicate that it expected more information. As to the retirement information, the Board found that the Respondent's delay in providing the information to the Union from Aug. until Oct. was permissible, as the Respondent had to wait to receive the requested information from its retirement plan provider. Further, as to the attendance policy, the Board found that the alleged 10-point system for evaluating attendance was not a new Respondent policy, but rather was merely a supervisor's informal, personal notations regarding attendance and thus did not rise to the level of a substantial and material change to the Respondent's attendance policy over which the Respondent was required to bargain.

In absence of exceptions, the Board adopted the judge's dismissal of the allegations that the Respondent violated Section 8(a)(1) by denigrating the Union's representative and threatening bargaining futility and plant closure; and violated Section 8(a)(5) by prohibiting the Union from posting materials in the plant on June 13, 2006, failing to provide the Union with all postings on or after that date, and engaging in surface bargaining.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Glass, Molders, Pottery and Plastics Workers Local 359; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Washington, Jan. 9-11, 2007. Adm. Law Judge Bruce D. Rosenstein issued his decision March 2, 2007.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Environmental Maintenance Solutions, Inc. (Teamsters Local 966 and an Individual) Pleasantville, NY Aug. 28, 2008. 2-CA-38340, 2-RC-23211; JD(NY)-34-08, Judge Eleanor MacDonald.

Aramark Services, Inc. (UNITE HERE Local 100) Long Island City, NY Aug. 27, 2008. 29-CA-28625; JD(NY)-33-08, Judge Howard Edelman.

Detroit Legal News Co. d/b/a Inland Press (an Individual) Detroit, MI Aug. 26, 2008. 7-CA-50893; JD-45-08, Judge John T. Clark.

Ivyport Logistical Services, Inc. (Machinists) Carolina, PR Aug. 28, 2008. 24-CA-10794; JD-44-08, Judge Ira Sandron.

CRH North America, Inc. (Individuals) Clanton, AL Aug. 29, 2008. 10-CA-36715, 37123; JD(ATL)-31-08, Judge Michael A. Marcionese.

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TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino (Auto Workers) (4-CA-36217; 352 NLRB No. 146) Atlantic City, NJ Aug. 29, 2008. [HTML] [PDF]

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LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Howard Industries, Inc., Substation Division, Ellisville, MS, 15-RC-8725, Aug. 25, 2008 (Chairman Schaumber and Member Liebman)
General Die Casters, Inc., Twinsburg and Peninsula, OH, 8-RC-16940, Aug. 28, 2008 (Chairman Schaumber and Member Liebman)

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(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION, ORDER [setting aside election conducted on 11/30/07] AND DIRECTION OF SECOND ELECTION

PA Pride Insulation, Inc., Columbia, PA, 4-RC-21360, Aug. 26, 2008

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Calumite Co., LLC, Portage, IN, 25-RC-10433, Aug. 28, 2008 (Chairman Schaumber and Member Liebman) [also denying Employer's request for a Stay of Election]

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